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(1) The application was filed by or on behalf of a DOE contractor employee or a deceased DOE contractor employee's estate or survivor;

(2) The illness or death of the DOE contractor employee may have been caused by exposure to a toxic substance; and

(3) The illness or death of the DOE contractor employee may have been related to employment at a DOE facility.

(b) An agreement that a Physician Panel must apply the standards set forth in § 852.8 of this part when making a determination that an illness or death arose from exposure to a toxic substance during the course of employment at a DOE facility;

(c) An agreement that the Program Office must provide assistance to only those applicants with a positive determination from the Physician Panel; and

(d) An agreement that a positive determination by the Physician Panel has no effect on the scope of State workers' compensation proceedings, the conditions for compensation, or the rights and obligations of the participants in the proceeding; provided that consistent with Part D of the Act such a determination will prevent DOE and may prevent a DOE contractor from contesting an applicant's workers' compensation claim.

§ 852.8 How does a Physician Panel determine whether an illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility?

A Physician Panel must determine whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility on the basis of whether it is at least as likely as not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the illness or death of the worker at issue.

10 CFR Ch. III (1–1–05 Edition)

§ 852.9 What materials must a Physician Panel review prior to making a determination?

The Physician Panel must review all records relating to the application that are provided by the Program Office, including but not limited to:

- (a) Medical records;
- (b) Employment records;
- (c) Exposure records;
- (d) Occupational history;
- (e) Workers' compensation records;
- (f) Medical literature or reports;
- (g) Any other records or evidence pertaining to the applicant's request for assistance;
- (h) A medical examiner's report, coroner's report, or death certificate for any application submitted by an estate or survivor of a deceased worker; and
- (i) Information submitted as a part of such a claim or developed by the Department of Labor (DOL) or by the Department of Health and Human Services (HHS) in the course of processing a claim for the applicant, including, where applicable, estimates of an applicant's cumulative radiation dose and the calculated probability that this dose was responsible for a cancer that is the subject of the claim, for any application submitted by an applicant also applying to DOL for benefits available under the Act.

§ 852.10 How may a Physician Panel obtain additional information or a consultation that it needs to make a determination?

If, after reviewing all materials provided by the Program Office, a Physician Panel finds that it needs additional information or consultation with a specialist in order to make a determination, it must request this information or consultation through the Program Office. A Physician Panel may request:

- (a) A recorded interview under oath with the applicant, by an individual designated by the Program Office, if the Physician Panel believes only the applicant can provide the necessary information.
- (b) That the applicant provide additional medical information;

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(c) Additional relevant information under the control of DOE or its contractors;

(d) Consultation with designated specialists in fields relevant to its deliberations;

(e) Specific articles or reports, or assistance searching the medical or scientific literature; or

(f) Other needed information or materials.

§ 852.11 How is a Physician Panel to carry out its deliberations and arrive at a determination?

(a) Each panel member reviews all materials relating to the application.

(b) If a Physician Panel has more than one physician, all panel members meet in conference, in person, or by teleconference in order to discuss the application and arrive at a determination agreed to by a majority of the members of the Physician Panel.

[67 FR 52853, Aug. 14, 2002, as amended at 69 FR 13712, Mar. 24, 2004]

§ 852.12 How must a Physician Panel issue its determination?

A Physician Panel must submit its determination under § 852.8 and the findings that provide the basis for its determination to the Program Office. The determination and the findings must be in writing and signed by all panel members. The findings must include:

(a) Each illness or cause of death that is the subject of the application.

(b) For each illness or cause of death listed under paragraph (a) of this section:

(1) Diagnosis;

(2) Approximate date of onset;

(3) Date of death, if applicable;

(4) Whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility;

(5) The basis for the determination under paragraph (b)(4) of this section;

(6) A determination concerning any other medical issue identified in the relevant State Agreement; and

(7) The basis for the determination under paragraph (b)(6) of this section.

(c) The Physician Panel must provide the Program Office with:

(1) Any evidence to the contrary of the panel's determination, and why the panel finds this evidence is not persuasive.

(2) A listing of information and materials reviewed by the panel in making its determination, including:

(i) Information and materials provided by the Program Office; and,

(ii) Information and materials obtained by the panel, including consultations with specialists, scientific articles, and the record of any interview with an applicant.

(3) Any other information the panel concludes that the Program Office should have in order to understand the panel's deliberations and determination.

§ 852.13 When must a Physician Panel issue its determination?

(a) A Physician Panel must submit its determination and findings to the Program Office within 20 working days of the time that panel member(s) have received the complete application for review from the Program Office.

(b) The Program Office may extend the deadline for a panel determination under the following circumstances:

(1) The Physician Panel indicates to the Program Office that it needs additional information or a consultation in order to carry out its deliberations, as provided for in § 852.10. In this case, the panel's determination is due 15 working days after receipt of the additional information (or notice from the Program Office that the requested information is unavailable), or 15 working days after receiving the consultant's recommendations, whichever is applicable; or

(2) The Physician Panel has requested and the Program Office has granted an extension.

(c) If an extension is granted pursuant to section 852.13(b)(2), the Program Office will specify the new deadline.

[67 FR 52853, Aug. 14, 2002, as amended at 69 FR 13712, Mar. 24, 2004]